

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

VITO A. PELINO,)	
)	
Plaintiff,)	Civil Action No. 18-1232
)	Judge David Stewart Cercone
v.)	Magistrate Judge Maureen P. Kelly
)	
ROBERT GILMORE, MICHAEL ZAKEN,)	
and STEPHEN DURCO,)	Re: ECF No. 23
)	
Defendants.)	

ORDER

Presently before the Court is Plaintiff's Motion for Sanction, ECF No. 23, in which Plaintiff Vito A. Pelino ("Plaintiff") asks this Court to sanction Defendants' counsel for the manner in which counsel mailed to Plaintiff a waiver of service summons and a consent to jurisdiction form. Plaintiff claims that Defendants' counsel is required by law to use the procedure outlined by the Department of Corrections ("DOC") for "Privileged Mail" to correspond with Plaintiff. Id. Plaintiff is incorrect.

Plaintiff asserts that Defendants' counsel's mail qualifies as "Privileged Mail" under the following DOC policy provision defining such mail as:

Mail from an elected or appointed federal, state or local official who has sought and obtained a control number issued by the [DOC's] Office of Chief Counsel. NOTE: Not all correspondence between an inmate and elected or appointed federal, state, or local official will require privileged correspondence processing. Control numbers will only be issued when the underlying matter involves matters related to a confidential investigation process or similar concerns.

ECF No 23 ¶ 10 (citing DC-ADM 803(c.)).

As pointed out in Defendants' Response to Motion for Sanctions, ECF No. 25, litigation of this case does not constitute a matter related to a confidential investigation process.

Correspondence from defense counsel with Plaintiff concerning this case is not Privileged Mail. Thus, no sanction is warranted for counsel's failure to utilize the Privileged Mail procedure. The Court notes that Plaintiff has received the mail sent by Defendants' counsel and has suffered no consequence due to delay of such mail.

AND NOW, this 4th day of December, 2018, IT IS HEREBY ORDERED that Plaintiff's Motion for Sanction, ECF No. 23, is DENIED.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rule 72.C.2 of the Local Rules of Court, the parties are allowed fourteen (14) days from the date of this Order to file an appeal to the District Judge which includes the basis for objection to this Order. Any appeal is to be submitted to the Clerk of Court, United States District Court, 700 Grant Street, Room 3110, Pittsburgh, PA 15219. Failure to file a timely appeal will constitute a waiver of any appellate rights.

BY THE COURT:

/s/ Maureen P. Kelly
MAUREEN P. KELLY
UNITED STATES MAGISTRATE JUDGE